IN THE HIGH COURT OF BOMBAY AT GOA
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SECOND APPEAL NO. 47 OF 2004

1. Executive Engineer,
   P.W.D., W.D.XXI,
   Murida, Fatorda,
   Margao, Goa, and

2. The State of Goa,
   through its Chief
   Secretary, Secretariat,
   Panaji, Goa. ... Appellants.

Versus

1. Manuel Braganza,
   married, 78 years of age,
   Carpenter, r/o H. No.433,
   Fatorda, Margao, Salcete,
   Goa, and

2. Mr. Raut Dessai,
   Engineer-in-Charge,
   P.W.D., W.D. XXI,
   Fatorda, Margao, Goa. ... Respondents.

Mr. Guru Shirodkar, advocate for the appellants.

Mr. M. B. D'Costa, Senior Advocate with Mr. J. A. Lobo, advocate for respondent no.1.

CORAM: P. V. HARDAS, J.

DATE : 19th August, 2004.

ORAL ORDER

The appellants are aggrieved by the Judgment and Decree passed by the Additional District Judge, Fast Track Court, South Goa, Margao, dated 6th January, 2004, in Regular Civil Appeal No. 20 of 2002, decreeing the suit filed by the respondents herein against the appellants and holding the appellants jointly and severally liable to pay to the respondents herein a sum of Rs.25,000/- with interest at the rate of 8% per annum from the date of filing of the suit till

realization. The trial Judge by its Judgment and Decree dated 17th November, 2001, in Regular Civil Suit No.536/2000 had dismissed the suit filed by the respondents/plaintiffs. The respondents/plaintiffs being aggrieved by the dismissal of the suit had filed Regular Appeal before the Appellate Court, which came to be allowed as stated above.

2. Mr. Shirodkar, learned Addl. Government Advocate appearing on behalf of the appellants, has urged the following substantial questions of law:-

> (a) According to the appellants the Appellate Court was not justified in reversing the decree of the trial Court in the absence of the Contractor employed by the appellants being made a party to the suit; and
>
> (b) The suit was bad for non-issuance of a notice under Section 80 of the Code of Civil Procedure.

3. In order to support these two contentions, Mr. Shirodkar, learned Addl. Government Advocate for the appellants, has invited my attention to the relevant paragraphs of the judgment of the trial Court as well as of the Appellate Court. The Appellate Court has clearly held that the fact that a contractor had been employed by the appellants had never been disclosed in the written statement. Only a vague plea had been taken by the appellants that the suit was bad for non-joinder of necessary parties. The name of the contractor had not been disclosed in the written statement filed by the appellants. Even during the evidence

of the respondents/plaintiffs it had not been suggested to him that any contractor had been employed by the appellants. It was only during the evidence of the appellants that the name of the contractor came to be disclosed. In that background, therefore, the Appellate Court came to the conclusion that the contractor was not a necessary party.

4. Mr. Shirodkar, learned Additional Government Advocate has urged before me that the suit was bad for non-issuance of notice under Section 80 of the Code of Civil Procedure. Learned counsel for the appellants has very candidly admitted that it was specifically not pleaded in the written statement that no notice under Section 80 of the Code of Civil Procedure had been issued. It was also not urged as a ground before the Appellate Court for dismissal of the appeal. It is a ground taken for the first time in the Second Appeal.

5. In respect of the first ground, the reasoning given by the learned trial Court, and the finding rendered thereon, is supported on the basis of the evidence on record and according to me no perversity has been pointed out in the reasoning of the Appellate Court warranting any interference in disturbing the said finding.

6. In respect of the second ground, undisputedly, a plea was not raised in the written statement that a notice

under Section 80 of the Code of Civil Procedure had not been issued by the plaintiffs before the institution of the suit. The appellants in the written statement have put in a plea that a defective notice had been issued. In the face of such conflicting pleas, according to me, this question cannot arise for consideration that the original plaintiffs had not issued a notice under Section 80 of the Code of Civil Procedure, before the institution of the suit. Even otherwise, not taking a plea specifically would amount to waiver.

7. After giving my anxious consideration to the evidence on record, according to me the findings recorded by the Appellate Court do not require any interference in Second Appeal.

8. Accordingly, Second Appeal No.47 of 2004 is dismissed.

P.V. HARDAS, J.

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